

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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LARRY L. WOODS,  
Plaintiff,

vs.

CITY OF BUFFALO,  
BUFFALO POLICE DEPARTMENT,  
DET. JOSEPH J. MARTIN,  
DET. DAVID REDMOND,  
DET. JOHN GARCIA,  
DET. THOMAS DOCTOR,  
DET. WILLIAM DONOVAN,  
DET. SHARON ACKER,  
DET. JUDITH WALKER,  
SGT. DET. BARBARA CALLAHAN-MOLL,

Defendants.

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**REPORT  
and  
RECOMMENDATION**

**10-CV-719A(F)**

In this civil rights case commenced August 30, 2010 by Plaintiff's attorney, Steven M. Cohen, Esq., Plaintiff alleged claims based on Fourth Amendment and Due Process violations specifically an unlawful search of Plaintiff's apartment, false arrest, excessive force, and failure to provide medical assistance. Following the granting of Plaintiff's motion to file an amended complaint (Dkt. 26) on May 10, 2011, Plaintiff requested and was granted an Amended Scheduling Order on February 2, 2012 (Dkt. 33) which required completion of discovery by May 2, 2012.

Based on a lack of activity in the case since 2012, the court directed, *sua sponte*, Plaintiff show cause by August 12, 2015, why the case should not be dismissed for failure to prosecute pursuant to Local Rule of Civil Procedure 41(b) by order dated July 14, 2015. By motion filed August 12, 2015, Plaintiff's attorney moved to withdraw asserting Plaintiff's failure

to communicate with counsel and an “irreconcilable” disagreement between counsel and Plaintiff as to further prosecution of the case (Dkt. 36) (“the motion to withdraw”). The court attempted to serve Plaintiff with a copy of the court’s order scheduling a hearing on the motion to withdraw, however, the notice was returned to the court by the U.S. Postal Service as undeliverable. Counsel’s motion to withdraw was granted on October 7, 2015 (Dkt. 41). Counsel was requested to search counsel’s file for another address for Plaintiff, but no such additional information was received. Thereafter, on July 20, 2016, the court issued another order (Dkt. 43) to show cause, returnable August 31, 2016, why the case should not be dismissed pursuant to L.R.Civ.P. 41(b). This order was mailed to Plaintiff at 320 Plymouth Avenue, Buffalo, New York but the mail was returned undeliverable. Using another address for Plaintiff, 558 25<sup>th</sup> Street, Apt. 2, Niagara Falls, New York, provided by Plaintiff’s withdrawing attorney, the court attempted on October 6, 2016, to serve another order to show cause on Plaintiff at such address, but such notice was returned to the court as undeliverable, unable to forward (Dkt. 47). To date, no communication from Plaintiff inquiring as to the status of this case has been received by the court.

### **CONCLUSION**

Based on the foregoing, the Complaint should be DISMISSED pursuant to L.R.Civ.P. 41(b) for failure to prosecute and the Clerk of Court should be directed to close the file.

Respectfully submitted,

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

Dated: October 31, 2016  
Buffalo, New York

Pursuant to 28 U.S.C. §636(b)(1), it is hereby

ORDERED that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of service of this Report and Recommendation in accordance with the above statute, Rules 72(b), 6(a) and 6(e) of the Federal Rules of Civil Procedure and Local Rule 72.3.

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Secretary of Health and Human Services*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Limited*, 838 F.2d 55 (2d Cir. 1988).

Let the Clerk send a copy of this Report and Recommendation to the Pro Se Plaintiff and the Defendants.

SO ORDERED.

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

DATED: October 31, 2016  
Buffalo, New York